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E.O. 12958: N/A

TAGS: PTER PREL SU CA

SUBJECT: COURT ORDERS CANADA TO REPATRIATE ABDELRAZIK

DESPITE 1267 "NO FLY" LISTING

REF: OTTAWA 313

**¶1.** (U) In a decision on June 4, a Federal Court judge ruled against the Canadian government in the case of Abousfian Abdelrazik and ordered it to issue him an emergency passport, arrange (and, if necessary, pay for) his transportation -- within 30 days -- from Khartoum to Montreal along with an escort, and ensure his appearance before the Court on July 7.

The court labeled Abdelrazik "as much a victim of international terrorism as the innocent persons whose lives have been taken by recent barbaric acts of terrorists." It ruled that Canada had breached Abdelrazik's right under the Canadian Charter of Rights and Freedom by not allowing him to return to Canada, although the judge indicated that he did not find that Canada had "engaged in a course of conduct and inaction that amounts to 'procrastination, evasiveness, obfuscation and general bad faith,'" as Abdelrazik's counsel had alleged. The judge underscored that "Charter rights are not dependent on the wisdom of the choices Canadians make, nor their moral character or political beliefs."

**¶2.** (U) The Court noted that the U.S. Treasury Department had designated Abdelrazik on July 20, 2006 for his "high level ties to and support for the Al-Qaida network" and that the U.S. State Department on July 21, 2006 had also listed him as a "person posing a significant risk of committing acts of terrorism that threaten the security of U.S. nationals and the national security." It noted that the UN 1267 Committee had listed Abdelrazik on July 31, 2006, and concluded that the U.S. -- not Canada -- had likely requested that listing. The court ruling underscored that "there is no direct evidence before this Court that Mr. Abdelrazik supports, financially or otherwise, is a member of, or follows the principles of Al-Qaida." The judge described the 1267 Committee regime as a "denial of basic legal remedies and as untenable under the principles of international human rights," as well as "lacking "basic procedural fairness" or even a "limited right to a hearing," and underscored that "one cannot prove that faires and goblins do not exist any more than Mr. Abdelrazik or any other person can prove that they are not an Al-Qaida associate." The judge was highly critical of the decision by Foreign Minister Cannon on April 3 to deny Abdelrazik's request for an emergency passport on grounds of "national security," after years of promises that the government would issue one if he could arrange and pay for his own travel.

**¶3.** (U) In the House of Commons on June 4, Liberal Party Foreign Affairs critic Bob Rae cited the court decision and asked the Foreign Minister whether he would now recognize Abdelrazik's right to return to Canada. Justice Minister and Attorney General Rob Nicholson instead commented on the "lengthy" nature of the ruling and promised only that government would "take it seriously," while insisting that the government would have to "read carefully" before commenting on the substance or announcing next steps. He specifically declined to comment on whether the government

would appeal the decision.

**¶4.** (SBU) Comment: As in a similar ruling on the government's responsibility to seek the repatriation of Canadian detainee at Guantanamo Bay Omar Khadr (reftel), the government is likely to appeal this unfavorable ruling.

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